IN THE HIGH COURT OF UTTARANCHAL AT NAINTIAL

Writ Petition No. 943 of 2003 (MS)

Prateek Tripathi s/o Sri Paras Nath Tirpathi
286/15, allahpur, Dbairhana Road, Allahabad …Petitioner

Versus

1. Uttaranchal Siksha Evam Parisha Parishad
   Ramnagar, District Naintial
2. Secretary, Uttaranchal shiksha Evam Parisha
   Parishad, Ram Nagar, District Nainital …Respondents

Sri S.S. Yadav, Advocate for the petitioner
Sri N.C. Gupta, Standing counsel for the respondents.

Dated: September 24, 2003

Hon'ble Rajesh Tandon J.

The present writ petition has been filed for a writ, order or direction in the nature of mandamus commanding the respondents for revaluation of answer sheets of Physics II paper and both the papers of Mathematics.

The petitioner alleged that he appeared in the Intermediate examination 2003 as Regular Student and has completed his Intermediate examination. His roll No. was 032884 in the examination. The petitioner alleged that he got only 15 marks in second paper of physics and 23 and 17 marks in first and second papers respectively of mathematics. He has stated that he got 72 marks in chemistry, 66 marks in Hindi and 54 marks in English. The petitioner made a representation on 10.7.2003, before the respondents requesting them to recheck the answer books of the

petitioner but all in vain. Hence the petitioner filed the present writ petition.

Heard the learned counsel for the parties.

So far as the revaluation of answer book is concerned the same has not been permissible under various authorities of the Apex Court and High Court. The Apex Court in Bhushan Uttam Khare vs Dean B.J. Medical College, 1992 (2)SCC220: AIR 1992 SC 917, has held as under:

" In deciding the matters relating to orders passed by authorities of educational institutions the Court should normally be very slow to pass orders in its jurisdiction because matter falling within the jurisdiction of educational authorities should normally be left to their decision and the Court should interfere with them only when it thinks it must do so in the interest of justice."

The Apex Court in Arun Desai vs High Court of Bombay through Chief Justice, reported in 1984 (Supp) SCC 372 has held as under:

"Students who fail in their examinations are generally prone to make allegations that the assessment of their answer scripts is defective, arbitrary or partial to explain their failure and to console themselves with the thought that not they but the examiners are to be blamed for that."

The Apex court in Maharashtra State Board of secondary and Higher Secondary Education vs Paritosh Bhupesh Kumarasheth AIR 1984 SC 1543 has held that evaluation of answer book does not attach the principle of nature justice. The observations of the Apex Court are as under:

"A process of evaluation of answer papers or of subsequent verification of marks does not attach the principles of natural justice

since no decision making process which brings about adverse evil consequences to the examines is involved. The principle of natural justice cannot be extended beyond reasonable and relational limits and cannot be carried to such absurd lengths as to make it necessary that candidates who have taken a public examination should be allowed to participate in the process of evaluation of their performances or to verify the correctness of the evaluation made by the examiners by themselves conducting an inspection of the answer books and determining whether there has been proper and fair valuation of the answers by the examiner. It was further held in this decision that it is in the public interest that the result of public examination when published should have some finality attached to them. If inspection and verification in the presence of the candidates and revaluation are to be allowed as of right it may lead to gross and indefinite uncertainty, particularly in regard to the relative ranking etc. of the candidates, besides leading to utter confusion on account of the enormity of the labour and time involved in the process. It was further held in the instant case that the court should be reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matter sin preference to those formulated by professional men possession technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them."

Relying upon the aforesaid observations made by the Apex Court it has been held by the Allahabad High Court in case Subhash Chand and other vs. State of U.P. an others (2001) 2 UPLBEC 1085 as under:

"The question is whether in absence of any statutory rule this Court can direct rechecking or revaluation of the answer books of the

Petitioner. The petitioners appeared in B.T.C. entrance examination 1998-99 and were declared unsuccessful. Answer books could be revealed or rechecked if the rules provide for it. In absence of any statutory rule the answer books cannot be rechecked or revalued by the respondents nor such a relief can be granted by this Court. The petitioners may be good students but that cannot entitled them to make self assessment and claim that they should have been awarded 90% marks. It self assessment is adopted as the basis of revaluating answer books in an examination and this Court is asked to interfere on this ground then the entire system of competitive examination shall come to a standstill and this Court shall stand converted into an evaluating body of answer books. "

It has further been held by the Allahabad High Court in the case Mobeen ahmad Ansari Vs. State of U.P. and others (1999) 1 UPLBEC 603 as under:

'It is a matter of great concern that in the recent years there is consideration infux of such writ petitions in this court has increased. Earlier the board of High School and Intermediate Education had inspired so much confidence that seldom writ-petition were filed. Filing of writ petition on such a large scale before this Court indicate that there is considerable dissatisfaction among the students and their parent which requires introspection by the Board authorities
as well although this court seldom interfere in the revaluation of the marks, but with a view to have greater accountability and transparency there is a need for framing some certain rules to rectify the error, mistakes or defection calculation of the marks. "

Coming to the merits of controversy Rule 21 Chapter XII of U.P. Education Code, provides as under:

21. उन परीक्षार्थियों की उत्तर पुस्तिकायें जो मुख्य परीक्षा में केवल एक विषय उस विषय के लिए निर्धारित 5 प्रतिषत अंको से अधिक से उत्तीर्ण नही है बिना

शुल्क अथ्वा आवेदन पत्र के संनिरीक्षित की जोयगी । अन्य परीक्षार्थी जो अपनी उत्तर पुस्तकें संनिरीक्षित कराना चाहते हैं निम्नलिखित नियमें के अनुसार करा सकते हैं।

क. कोई परीक्षार्थी जो परिषद द्वारा संचालित परीक्षा में प्रविष्ट हुआ है विषयों के अपने अंको की संनिरीक्षा द्वारा पुनः जॉच कराने के लिए आवेदन पत्र दे सकता है ।

ख. ऐसे समस्त आवेदन पत्रों के साथ कोष चलान की एक प्रतिलिपि यह दिखाते हुए 20 रूपये प्रति विषय की दर से र्निधारित शुल्क दे दिया गया है, अवष्य होनी चाहिए। उत्तर प्रदेष से बाहर के सीन से आवेदन पत्र भेजने वाले परीक्षार्थियों के सम्बन्ध में यह शुल्क सचिव के कार्यालय में प्रेषित पोस्टल आर्डर अथवा स्टेट बैंक आफ इंडिया की इलाहाबाद शाखा पर रेखित बैंक डाफट द्वारा भेजा जाना चाहिए ।

ग. ऐसे समस्त आवेदन पत्र परीक्षाफल की तिथि से तीस दिनों की अवधि के अन्दर अवष्य दिये जाने चाहिए।

The aforesaid rule (ka) contains the provisions regarding scrutiny पुनःजॉच of the answer books. The provision is self explanatory and the board has power to scrutinize the answer books in accordance with rule (ka) of rule 21. The rule gives ample power to the Board to help and assist the students who are desirous of getting their answer books scrutinised.

There lies a deference between scrutiny and revaluation. The provisions as referred above contains the provision of संनिरीक्षा which can be termed as scrutiny of answer books and it may also be called as पुनःजॉच whereas revaluation has been defined in the Legal Glossary as पुर्नमूल्यांकन. Thus it is clear that only scrutiny पुनःजॉच of answer books is available to a student and there is no provision of valuing the answer books again.

In view of the aforesaid facts and circumstances liberty is given to the petitioner to apply for scrutiny of his answer books according to regulation 21 of chapter XII of Education Manual Act. If such an application is filed, the respondents are directed to dispose of the same

within a period of three weeks from the date of filing of the certified copy of the order.

Subject to the aforesaid observations the writ petition is disposed of.

(Rajesh Tandon J.)

24.09.2003
Dhayni